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FILED

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-819

JOSE A. REYES, *Petitioner*,

v.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 16, AND ELOY ORTEGA, President; Ray Mascarenas, Vice President; Fred Sandoval, Business Manager; John Yanes, Recording Secretary; George Quintana, Executive Board Member; Remigio Martinez, Executive Board Member; Frutoso Chavez, Secretary-Treasurer; Alex Archuleta, Past Secretary-Treasurer, and Willie Horcasitas, Member; *Respondents*.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOHN F. QUINN
STANDLEY, WITT AND QUINN
342 E. Manhattan Avenue
P.O. Drawer A
Santa Fe, New Mexico 87501
Attorney for Respondents

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Pursuant to the Court's directive, Respondents file this Response to Petitioner's Petition for a Writ of Certiorari.

OPINIONS BELOW

The Memorandum Opinion and Order of the United States District Court for the District of New Mexico is reported at 327 F. Supp. 978 (Appendix A). The opinion affirming the District Court's Opinion and Order by the Court of Appeals for the Tenth Circuit is reported at 464 F. 2d 595 (Appendix B).

Petitioner's suggestion for a Rehearing En Banc was denied (Appendix C).

STATEMENT OF THE CASE

On September 14, 1968, the Respondent Union held a union trial. Petitioner faced, and was convicted of, several charges. The cases below were attempts by Petitioner to overturn his convictions and the penalties received by him. The union trial arose because of Petitioner's prior objectionable activities.

These offenses occurred on August 8, 1968.

The afternoon of August 8, 1968, Petitioner entered the Union Meeting Hall, and challenged the Union President, Eloy Ortega, to fight him. At that time, Petitioner threatened other union officials with physical harm and abuse. The Tenth Circuit Court found that Petitioner's behavior was "generally violent, profane and vulgar."

In the evening of that same day, the Union attempted to hold a regular business meeting. Petitioner disrupted the meeting by speaking without being recognized.

Further, Petitioner refused to sit down or yield the floor upon request by the Union President. Petitioner's continually disruptive actions and obnoxious

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behavior forced the union meeting to be adjourned without having transacted any business.

The Union subsequently took disciplinary action against Reyes as above described.

Written notice of the charges were mailed on August 13, 1968, to Petitioner. On August 20, 1968, Petitioner attempted to disqualify the entire Union Executive Board from participating in his hearing. Such an extraordinary request was not covered by any section of the Union's Constitution or Rules. Accordingly, the Union Executive Board requested an opinion from the International as to whether the entire Board could be disqualified. The answer was that Petitioner had no right to disqualify the entire Board.

Eloy Ortega did disqualify himself voluntarily from sitting on the Executive Board. He was President of the Union and appeared as the prosecuting witness. The members of the Executive Board at that time were Eloy Ortega, Pedro Griego, Joe Mascarenas, Fred Sandoval, Frutoso Chavez, George Quintana, John Yanes and Remigio Martinez.

Petitioner then requested an extension of time for his trial date, for the purpose of better preparing his defense. Petitioner was granted this requested extension of time by the Executive Board. The Union Trial was held on September 14, 1968. The charges against Mr. Reyes included the following:

1. Attempting to incite violence while under the influence of alcohol and threatening the local union president.
2. Disrupting the regular membership meeting held on August 8, 1968, to the point where regular union business could not be conducted.

The Union trial court found Petitioner guilty of both charges. Petitioner was suspended from the Union for three (3) years; he was not allowed to attend meetings for that period of time. Petitioner was also fined the sum of Two Hundred Fifty Dollars ($250.00). He was *not* disallowed from participating in the union's election.

The Union's Constitution allowed Petitioner to appeal the Local's decision to the International Union. Petitioner exercised that right. By letter of January 21, 1969, the International Union notified the Respondent Union of its decision. The decision to suspend Petitioner was affirmed. The fine levied upon Petitioner was reduced from Two Hundred Fifty Dollars ($250.00) to One Hundred Dollars ($100.00). Petitioner took no further administrative action. Rather, Petitioner then filed the instant lawsuit.

Petitioner argues substantive portions of his case within that portion of his Petition, styled as "Statement of the Case." Generally, Petitioner's argument is that the members of the union trial board were biased against him. Petitioner then states that this bias resulted in his not receiving a full and fair hearing.

This Court should note that no evidence of bias was ever produced by Petitioner before, during or after his union trial. Petitioner did say he "thought" the members were biased. Of course, the members of the trial board and Petitioner represented different political cliques within the union. But Petitioner could submit no evidence showing, or tending to show, bias on the part of the union trial board members.

The Respondent union operated under established remedial procedures. If a member violated union

rules, he was tried by the Executive Board—the union's elected officials.

Petitioner attempted to take advantage of this procedure by the simple expedient of offering to fight the union president and insulting the remainder of the union's elected officials. When Petitioner subsequently disrupted the union's business meeting and the union instituted disciplinary proceedings, Petitioner sought to avoid being disciplined at all by posturing that the union's elected officials were biased because of his offensive behavior. Thus, Petitioner would have, at once, completely frozen the union's established remedial procedures and avoided being punished for behavior which was offensive to the extent that he now claims it must have biased the Board members against him.

The opinion and order rendered by the District Court for the District of New Mexico reflects the extent to which the Court went to allow Petitioner to show his rights were violated by the union proceeding (See Appendix A). The Court there stated as follows:

> "The Court admitted testimony at the trial concerning all the circumstances surrounding the charges and union trial of Mr. Reyes. The Court finds that substantial evidence was presented at the trial which showed that the incidents upon which the charge was based were not feigned or imaginary.
>
> The Court finds that the charge and disciplinary proceedings were brought against Jose Reyes for legitimate reasons and not for the purpose of denying him rights guaranteed by the LMRDA." (Appendix A, p. 2a)

This Court should note here that the District Court also stated that due process under the Labor-Manage-

ment Relations Disclosure Act requires more than an adherence to mere mechanical formalities. The Court also held that the scope of free speech guaranteed to members under the Act is even broader than that under the United States Constitution. The Court then held as follows:

> "The right of free speech protected by the act does not however, give a member license to advance his views by threatening physical harm to elected union officials. *The charges and evidence adduced at trial show that Mr. Reyes was disciplined for threatening the union president and not for advocating his views.*" (Appendix A, p. 2a; Emphasis supplied.)

On appeal, the judgment in favor of Respondents was upheld. The Tenth Circuit Court stated as follows:

> "The incident giving rise to the charges and disciplinary action occurred on August 9, 1968. On that afternoon Reyes entered the Union Meeting Hall and challenged the Union President to fight him. He also threatened various other officials and was generally violent, profane and vulgar. That evening Reyes disrupted the Union meeting and caused it to be adjourned without ever having transacted any business." (Appendix B, p. 4a)

The Court then reviewed the procedure followed before, during and after the union trial of Petitioner. Regarding the scope of review of the disciplinary proceedings by the lower court, the Tenth Circuit Court stated as follows:

> "The trial court correctly interpreted its role in reviewing the union disciplinary proceeding. That

> court, when reviewing such disciplinary action, is not free to substitute its judgment for that of the union; it must uphold the Union's findings if supported by any evidence produced at the disciplinary trial conducted by an unbiased trial body which afforded a fair and impartial determination of guilt. The trial court did not err in its self-imposed limitation on review, nor do we find error in its decision upholding the disciplinary sanctions imposed." (Appendix B, p. 5a)

The trial court heard extensive testimony regarding the lack of bias on the part of the members of the Executive Board in dealing with Petitioner's disciplinary proceedings. Based upon the evidence, the trial court concluded that Petitioner received a "full and fair hearing" during his disciplinary proceedings.

REASONS FOR REFUSING THE WRIT

I

Petitioner Has Failed To Bring Himself Within the Purview of Supreme Court Rule 19 (1)(b)

While Petitioner herein makes numerous factual allegations concerning the proceedings, many of which find no support in the record as discussed elsewhere herein, he makes no effort to comply with Rule 19 of this Court. Nowhere does he show that there is any conflict between the decision herein and a similar decision in any other Circuit; nowhere does he demonstrate that the decision herein is in conflict with any decision of this Court; nowhere does he show that any important question of Federal Law has been presented which has not been, but should be, decided by the Supreme Court. Neither has he shown any departure from recognized procedure by the Court of Appeals, or sanction thereof

by the Court of Appeals on the part of the District Court to invoke the Court's supervisory powers.

Respondent submits that if Petitioner has researched the question and discovered any authority which would bring him within the purview of Rule 19 (1)(b), he should divulge it. Since he has not, he has failed to carry his burden and the Writ should not issue.

II

A Writ of Certiorari to the Court of Appeals Is Untimely Since Said Court No Longer Has Jurisdiction of the Case

On September 7, 1972, Petitioner's motion for rehearing and suggestion for rehearing *en banc* was denied (Appendix C). On September 20, 1972, the mandate was stayed until October 20, (Appendix D) and on October 24 the mandate was further stayed until November 15 (Appendix E). On November 16, the Court of Appeals issued its mandate, thus vesting jurisdiction once again in the United States District Court for the District of New Mexico (Appendix F). This Petition was filed on December 4, 1972.

On February 16, 1973, Respondents received Notice from Clerk of the District Court regarding the disposition of the exhibits in this case (Appendix G). Respondents are unaware of the present disposition of said exhibits, but would point out that Rule 21, Rules of the United States District Court for the District of New Mexico, provides that the Clerk may destroy them, and there may not now be a full record for review.

Thus, jurisdiction is now in the District Court and a Writ of Certiorari to the Court of Appeals would be of no effect.

III

The Trial Court Applied the Correct Test in Determining Its Scope of Review of the Disciplinary Procedures Against Petitioner

This Court should note what Petitioner attempts here. This Court is requested to look beyond the record of this case. Petitioner requests that this Court evaluate his union trial "against the background of the participants." Petitioner requests that this Court "determine the impartiality and motivations of the persons acting as judges and their interest and involvement in the subject, and subject matter being tried."

Petitioner thus invites the Court into a quagmire. Substantial evidence exists in the trial court record to refute Petitioner's allegations of bias. However, Petitioner would have the Court go beyond the record and impute attitudes to the trial board members. The dangers are obvious and substantial.

The issue here is as follows:

1. Did the trial court and the Tenth Circuit Court apply the correct rule regarding the scope of judicial review of the union trial?

The standards which the Respondent Union had to satisfy during its disciplinary proceeding against Petitioner are found in 29 USC Section 411(a)(5). They are as follows:

> (5) safeguards against improper disciplinary action.—No member of any labor organization may be fined, suspended, expelled or otherwise disciplined . . . unless such member has been,
>
> (a) served with written specific charges;
>
> (b) given a reasonable time to prepare his defense;
>
> (c) afforded a full and fair hearing."

Petitioner does not attack the first two criteria.

What is the definition of a "full and fair hearing"? The elements of a full and fair hearing resemble those elements of constitutional due process. That is, they include notice, reasonable opportunity to be heard, the right to present evidence and the right to confront witnesses, and cross-examine them. *Parks* v. *International Brotherhood of Electrical Workers,* 314 F. 2d 886 (C.A. Md. 1963), cert. den. 835 S. Ct. 1111, 372 U.S. 976, 10 L. Ed. 2d 142; *Smith* v. *General Truck-Drivers, Warehousemen and Helpers Union Local 467 of San Bernardino and Riverside Counties,* 181 F. Supp. 14 (D.C. Col. 1960).

Upon appeal from such a proceeding, the Court is neither authorized nor required to weigh evidence presented at the union trial. The Court may not substitute its judgment regarding the credibility of the witnesses and the evidence presented at the union trial. *Phillips* v. *Teamsters, Chauffeurs, Warehousemen and Helpers Local No. 560,* 209 F. Supp. 768 (D.C. N.J. 1962); *Burke* v. *International Brotherhood of Boilermakers,* 417 F. 2d 1063 (9th Cir. 1969), *aff'g* 302 F. Supp. 1345 (N.D. Cal. 1967).

Petitioner received written notice of the charges. He requested and obtained an extension of time in order to better prepare his defense. He testified or was given the opportunity to testify, in his own behalf. He confronted the witnesses who testified against him. He was allowed the opportunity to cross-examine the witness.

Under the above authority, Respondents submit that the disciplinary proceedings against Petitioner satisfied due process requirements. Respondents further

submit that the Courts below applied the correct test in determining the scope of inquiry into the disciplinary hearing for Petitioner. However, this Court should note the extent to which the trial court went in allowing Petitioner to present evidence regarding the fairness of his union trial. The trial court stated that due process under the Labor-Management Relations Disclosure Act requires more than adherence to mere technical formalities. Further, the trial court stated that the court could properly scrutinize the union trial to determine whether the institution of charges was improperly motivated. The trial court then stated as follows:

> "*The Court admitted testimony at the trial concerning all the circumstances surrounding the charges and union trial of Mr. Reyes.* The court finds that substantial evidence was presented at the trial which showed that the incidents upon which the charge was based was not feigned or imaginary.
>
> The Court finds that the charge and disciplinary proceeding were brought against Jose Reyes for legitimate reasons and not for the purpose of denying him rights guaranteed by the LMRDA. (Appendix A, p. 2a; Emphasis supplied.)

The language flatly refutes Petitioner's allegation that his union trial was for political reasons. Further, the language refutes Petitioner's allegation that the record reflects any bias or prejudgments by the union trial board members. The trial court allowed into the record all the evidence Petitioner could muster regarding his allegation of not receiving a full and fair union trial. Upon a review of all of the evidence, the trial court held against Petitioner.

Petitioner now requests this Court to ignore the trial court's efforts, the record, and the above authority. Petitioner's request should fail.

IV

Petitioner Was Entitled To, and Received, a Full and Fair Hearing During This Disciplinary Proceeding

Petitioner's argument here is apparently identical to that made under Point I of his Petition. The only added element seems to be that he failed to receive a full and fair hearing as a matter of law. That is, Petitioner alleges that the union trial board was prejudicial against him as a matter of law.

The argument is confusing. As argued above, the trial court went into the circumstances surrounding Petitioner's union trial extensively. Apparently, realizing the import of the trial court's action, Petitioner attempts to sidestep the problem by arguing that, as a matter of law, the trial board members were biased.

Petitioner cites no authority to support this proposition. The *Parks* case, supra, is not authority for the proposition.

However, Respondents do wish to call the Court's attention to several misstatements of fact by Petitioner under this point of fact.

Petitioner alleges that he attacked the members as "having been in election irregularities, embezzlement and breach of fiduciary duties" prior to his union trial.

This statement is not true. The man who was accused of embezzlement at a time prior to Petitioner's

union trial was Alex Archuleta. Mr. Archuleta didn't even sit on the board which heard the evidence at Petitioner's union trial. Further, Mr. Archuleta was not a member of the union executive board. No other member of the board was accused of embezzling union funds.

Further, no testimony was adduced showing or hinting that any of the other board members were accused of election irregularities or a breach of fiduciary duties.

The record does not reflect that the union's International Representative initiated and brought the charges against Petitioner. The charges against Petitioner were initiated and brought by Eloy Ortega, the union president. The record does reflect that Eloy Ortega requested help from the International Representative in assuring that Mr. Ortega properly drew the written charges against petitioner. The International Representative was approached solely to assure that the charges were procedurally proper under the union constitution and by-laws.

Petitioner further implies that the trial was held for the sole purpose of disallowing his participation in a union election. (See Petitioner's Petition, pp. 5, 19). The trial court record does not so reflect. Indeed, Petitioner was a candidate in the second election, as reflected by the ballots for the first and second union elections. (See Appendices H and I) Petitioner campaigned actively throughout the state. He was defeated. Petitioner's allegation that he was disallowed from participating in the second union election is a misstatement of fact.

V

The Tenth Circuit Court's Interpretation of the Scope of Review of the Union Trial Board's Disciplinary Action Was Correct; the District Court's Inquiry Into the Facts Satisfied Any Possible Requirements Under the Labor-Management Relations Disclosure Act

The initial weakness in Petitioner's argument here is that he ignores the fact that the trial court heard evidence regarding the charges made against Petitioner by his union. Further, the trial court heard evidence regarding the unbiased and disinterested nature of the executive board members. The trial court's opinion states clearly that the trial court heard evidence and satisfied itself that Petitioner was not prejudiced under either issue.

Further, Petitioner attempts to impress this court with how "minor" Petitioner's offenses against the union were. The argument is remarkable. It is uncontradicted (and was reflected in the trial court's opinion) that Petitioner was disciplined for threatening physical harm to union officials (Appendix A, p. 2a). Further, Petitioner was disciplined because he disrupted a regular union business meeting to an extent that it had to be adjourned before transacting any business. (Appendix B, p. 4a)

Petitioner's argument that these offenses must be balanced against his freedom of speech is correct. The trial court balanced these considerations, and held against Petitioner.

CONCLUSION

For the foregoing reasons Respondents respectfully submit that this Court should refuse to grant a Writ of Certiorari to review the decision below.

Respectfully submitted,

JOHN F. QUINN
STANDLEY, WITT AND QUINN
342 E. Manhattan Avenue
P.O. Drawer A
Santa Fe, New Mexico 87501

Attorney for Respondents